IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4034 of 2006
With
SPECIAL CIVIL APPLICATION No. 4039 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

THAKOR NANUBA NARSINHJI & 1 - Petitioner(s)
Versus
STATE OF GUJARAT & 4 - Respondent(s)

==========

Appearance :
MR PN BAVISHI for Petitioner(s) : 1 - 2.
Mr. Dipen Desai, AGP for Respondent(s) : 1,
NOTICE NOT RECD BACK for Respondent(s) : 1,3 - 4.
NOTICE SERVED for Respondent(s) : 2, 5,

==========

CORAM : HONOURABLE MR.JUSTICE M.R. SHAH
Date : 02/05/2006

ORAL JUDGMENT

As common question of law and facts arise in both these petitions, they are being disposed of by this common judgment and order.

2. By way of these petitions under Article 227 of the Constitution of India, the respective petitioners have challenged the common judgment and order passed by the Gujarat Revenue Tribunal dated 19th April 2005 in Revision Applications TEN.B.A. No. 326/2000 and TEN.B.A. No. 324/2000 in dismissing both the Revision Applications arising under provisions of Gujarat Agricultural Lands Ceiling Act, 1959.

3. Special Civil Application No. 4034 of 2006 is arising out of judgment and order passed by the Gujarat Revenue Tribunal in Revision Application TEN.B.A. No. 326/2000 and Special Civil Application No. 4039 of 2006 arises out of judgment and order passed by the Gujarat Revenue Tribunal in Revision Application TEN.B.A. No. 324/2000.

4. It appears from the record that one Thakor Narsinhji Padamsinhji submitted declaration under the provisions of the Gujarat Agricultural Lands Ceiling Act, 1959 [hereinafter referred to as “the Act”] declaring his holding of land as 84 acres and 26

gunthas as on 1.4.1976. The Mamlatdar & ALT by order dated 16th November 1983 in Ceiling Case No. 217/1976 declared 38 acres and 06 gunthas of land as excess land under the provisions of the said Act. It appears from the record that the said Thakor Narsinhji Padamsinhji preferred appeal being Ceiling Appeal No. 26/84 before the Deputy Collector, Tharad. Simultaneously, the Deputy Collector, Tharad also took the order passed by the Mamlatdar & ALT, Vav, dated 16.11.1983 under suo motu revision, vide Revision Case No. 38/84. The Deputy Collector, Tharad, by his order dated 29.11.1984 dismissed the Ceiling Appeal No. 26/84 filed by Thakor Narsinhji Padamsinhji. The Deputy Collector, Tharad, by order dated 30.11.1986 modified the order passed by the Mamlatdar and ALT dated 16.11.1983 while passing order in suo motu revision, being Ceiling Revision No. 38/1984. The said Thakor Narsinhji Padamsinhji preferred Revision Application TEN.B.A. No. 99/1985 before the Gujarat Revenue Tribunal ['GRT'] and the GRT by judgment and order dated 19.9.1988 dismissed the said Revision Application No. 99/1985 confirming

the order passed by the Deputy Collector, Tharad dated 30th November 1986 declaring 41 acres and 10 gunthas of land as excess land. It appears from the record that thereafter the heirs of Thakor Padamsinhji, being petitioners of Special Civil Application No. 4039 of 2006 preferred Ceiling Appeal No. 5/1999 before the Deputy Collector, Tharad, challenging the order passed by the Mamlatdar and ALT dated 16.11.1983 in Ceiling Case No. 217/1976 declaring 38 acres and 6 gunthas of land as excess land which came to be dismissed by the Deputy Collector, Tharad by order dated 31st July 2000 by holding that the said order has been confirmed by the GRT by judgment and order passed in Revision Application TEN.B.A. No. 99/1985. Being aggrieved and dissatisfied with the order passed by the Assistant Collector, Tharad in Ceiling Case No. 5/1999 the petitioners of Special Civil Application No. 4034 of 2006 preferred Revision Application TEN.B.A. No. 326/2000. Simultaneously, petitioners of Special Civil Application No. 4039 of 2006 preferred Revision Application TEN.B.A. No. 324/2000

before the GRT challenging the very order passed by the Assistant Collector, Tharad in Ceiling Appeal No. 5/1999. Both the revision applications came to be heard jointly by the GRT and the GRT by common judgment and order dated 19th April 2005 dismissed both the aforesaid revision applications by holding that earlier the order passed by the Mamlatdar and ALT which was modified by the Deputy Collector, Tharad by order dated 30th November 1986 passed in Ceiling Revision Application No. 38/1984 came to be confirmed by the GRT by judgment and order dated 19.9.1988 passed in Revision Application TEN.B.A. No. 99/1985 which has become final as the same is not further challenged. The Tribunal also considered the case put forward by Thakor Jagatsinhji Padamsinhji that he has some right in the land in question and/or he was an interested party and the Tribunal considering the record held that no case was advanced before the Mamlatdar & ALT at the relevant time to the effect that Thakor Jagatsinhji Padamsinhji had no interest in the land in question and the Tribunal also considered that in fact there was a partition

between the deceased Thakor Narsinhji Padamsinhji and Thakor Jagatsinhji Padamsinhji. Being aggrieved and dissatisfied with the common judgment and order passed by the GRT dated 19th April 2005 in Revision Applications TEN.B.A. No. 324/2000 and TEN.B.A. No. 326/2000 in dismissing the same, the respective petitioners have preferred the present Special Civil Applications under Article 227 of the Constitution of India.

5. Shri M.R. Vyas, learned advocate appearing on behalf of the respective petitioners has vehemently submitted that the Tribunal has wrongly believed that deceased was not entitled to the benefits of Sections 6(3C) or Section 6(3B) of the Act. He has further submitted that Ceiling Appeal No. 5/1999 has been wrongly decided on 30th July 2000 on the ground of res judicata. No other submission has been made.

6. On perusal of the orders passed by all the authorities below including the one passed by the

GRT, it transpires that the Mamlatdar and ALT, Tharad/Vav, by order dated 16th November 1983 in Ceiling Case No. 217/1976 declared 38 acres and 6 gunthas of land as excess land which came to be further enhanced to 41 acres and 10 gunthas of land by the Deputy Collector, Tharad by order dated 30th November 1986 in Ceiling Revision Application No. 38/1984. The said order came to be challenged by the original-declarant, Thakor Narsinhji Padamsinhji before the GRT and the GRT by judgment and order dated 19.9.1988 dismissed the said Revision Application TEN.B.A. No. 99/1985 confirming the order passed by the Deputy Collector, Tharad, declaring 41 acres and 10 gunthas of land as excess land. It further appears from the record that the said order has become final as it was never challenged before this Court. Subsequently, the heirs of Thakor Narsinhji Padamsinhji challenged the original order passed by the Mamlatdar and ALT, Tharad, dated 16th November 1983 in Ceiling Case No. 217/1976 declaring 36 acres and 6 gunthas of land as excess land before the Deputy Collector/Assistant Collector, Tharad,

being Ceiling Appeal No. 5/1999. Considering the fact that the said order came to be confirmed by the GRT, the said appeal came to be dismissed on the ground of res judicata and therefore the order passed by the GRT dated 19.9.1988 in Revision Application TEN.B.A. No. 99/1985 has become final. The said order passed by the Assistant Collector, Tharad in Ceiling Appeal No. 5/1999 came to be confirmed by the GRT by impugned judgment and order. No illegality has been committed by any of the authorities below much less by the Gujarat Revenue Tribunal. Once the order passed by the Deputy Collector, Tharad, declaring 41 acres and 10 gunthas of land as excess land, has become final and the judgment and order passed by the GRT dated 19.9.1988 in Revision Application TEN.B.A. No. 99/1985 was not challenged by the original-declarant, it was not open for the heirs of the original-declarant to challenge the original order passed by the Mamlatdar and ALT, Tharad, which was, in fact, confirmed by the GRT. There is no jurisdictional error committed by any of the authorities below much less an error of law which

require interference of this Court in exercise of powers under Section 227 of the Constitution of India. Even otherwise, on merits also, the Tribunal has considered the case put forward on behalf of Thakor Jagatsinhji Padamsinhji and has also considered that in fact there was a partition between the deceased Thakor Narsinhji Padamsinhji and Thakor Jagatsinhji Padamsinhji. Thus, the present case is lacking on merits also.

7. For the reasons stated above, there is no substance in both the petitions which require dismissal and the same are accordingly dismissed. Notice is discharged.

[M.R. Shah, J.]

rmr.